

REMARKS

By this amendment, no claims have been amended, and no claims have been added nor deleted. Hence, claims 1-3, 7-9, 16-17 and 55 remain currently pending.

1. **Response to Claim Rejections under 35 U.S.C. § 103**

Claims 1-3, 7, 16, and 55 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kessler et al., U.S. Patent Number 5,324,077 (hereinafter "Kessler") in view of Bitran, et al, Provider Incentives and Productive Efficiency in Government Health Services document, September , 1992. URL: <http://www.phrplus.org/Pubs/hfsmar1.pdf> (hereinafter "Bitran"), and further in view of Seare, U.S. Patent Number 5,557,514 (hereinafter "Seare"), and "Celadon Health Signs With Symmetry; Physician Incentive System Will Use Episode Treatment Groups," PR Newswire. June 2000, (hereinafter "Celadon").

Claim 1 (with emphasis added below) presently recites:

1. A computer-implemented method, executed in a first computer operated by an incentive administrator that is coupled to a second computer operated by a payer and a third computer operated by a healthcare provider, of providing a monetary incentive payable to the healthcare provider upon completion of a course of treatment for a patient with a condition during an episode of care, the method comprising the steps of:

- creating an initial baseline value related to treatment of the condition;
- receiving over the computer network from the payer a diagnosis of the patient performed by the healthcare provider and provided by the healthcare provider to the payer, along with an associated cost quantified by the initial baseline value;
- creating an episode of care based upon the diagnosis of the healthcare provider and a decided course of treatment for the condition;
- verifying that the episode of care is not an outlier case representing an extreme condition that costs significantly more than the cost associated with the initial baseline value;
- verifying that the episode of care is not subject to gaming effects;
- summing a plurality of claims processed during the episode of care of the patient for the condition to obtain a total treatment cost;
- adjusting the initial baseline value by factoring in any effects due to comorbidity to derive an adjusted baseline value;
- determining if the total treatment cost is less than the adjusted baseline value, thus resulting in a cost savings for the decided course of treatment;

causing a portion of the cost savings to be sent to the healthcare provider in the form of a targeted monetary incentive that is individually calculated based on the episode of care, and correlated to the total treatment cost; and

determining a portion of the cost savings to be retained by the incentive administrator.

As stated in the instant Office Action, “Kessler and Bitran fail to explicitly disclose a method further comprising a targeted incentive that is individually calculated based on the episode of care and correlated to the total treatment cost.” (Office Action, 09/21/2006, p. 5). However, the Examiner cites Celadon as teaching this element. It is respectfully submitted that Celadon does not qualify as prior art because at least a portion of this reference is attributable to the applicant. Applicant herewith submits a Declaration Under 37 CFR 1.132 stating that at least the portion of the Celadon reference (e.g., Celadon, p. 2) that discusses the aspect of Celadon working “in cooperation with payors and third party administrators to introduce targeted, real-time, and proportionate incentive payments to physicians” is the work of the applicant. Applicant is thus the inventor of the subject matter disclosed and cited in the Celadon reference, and claimed in the present application, and thus the Celadon reference is not prior art to the claimed invention. It is respectfully submitted, therefore, that independent claims 1 and 55, and their respective dependent claims are in condition of allowance.

As stated in the accompanying Declaration, the present application was initially assigned by inventors Ashford and Sultan to Celadon Health, Inc., on 02/12/2001, as recorded at Reel/Frame: 011515/0234. It was then assigned back to Clinton Ashford on 12/14/2004, as recorded at Reel/Frame: 016229/0673.

Applicants respectfully request that this response and accompanying Declaration and papers be made part of the official record in the present application.

2. Petition for Extension of Time

A Petition for Extension of Time Under 37 CFR §1.136(a) is enclosed herewith for a

three-month extension of time.

If there are any shortages, the Examiner is authorized to charge our Deposit Account Number 503616.

Respectfully submitted,

COURTNEY STANIFORD & GREGORY LLP

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